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MEMORANDUM

DATE: JAN 28 1987

SUBJECT: Recommended Concurrence on Settlement  
Agreement for U.S. v. Medley, et al.

FROM: James P. Sargent  
Regional Counsel

TO: Thomas L. Adams (LE-133)  
Assistant Administrator for Enforcement  
and Compliance Monitoring

10291146



Attached for your signature is the Consent Decree for United States v. Medley, et al., a civil action brought to recover the Government's response costs for the cleanup of the Medley Farm Site in Calhoun, South Carolina. The Consent Decree provides for a cash-out settlement of \$550,000. This figure represents reimbursement for approximately 83% of the Government's total response costs (including indirect and enforcement costs) and approximately 95% of the cleanup costs.

A. Background Information and Nature of the Case

The case involves the cleanup of a waste disposal site on the Medley property in 1983. The site was used for the disposal of slurred waste and dumped tanker loads of liquid from approximately 1960 to 1976. Defendant Ralph Medley owned the site while defendants Clyde, Grace, and Harry Medley operated the site. Defendants Milliken and Company, National Starch and Chemical Corporation, and Unisource Chemical Corporation sent waste to the site. The original defendants alleged in a third-party complaint that AMCO Industries, Inc., EASF Corporation, Ethox Chemicals, Inc., Polymer Industries, and Tanner Chemical Company also sent waste to the site.

A cost recovery action was initiated in January 1986 pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607. The Government also sought a declaratory judgment against the defendants for any future response costs it

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COLE

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RAVAN

might incur. In November of 1985 the judge issued an Order against the Hedley Defendants which found them liable for response costs under Section 107.

The Hedley site was proposed for addition to the National Priorities List (NPL) in June 1986.

After negotiations over the past several months, a settlement has been worked out with regard to past response costs.

B. Terms of the Consent Decree

The Consent Decree provides that the defendants and third-party defendants will pay \$569,000 to the United States. In consideration of this settlement, those parties will be given a release from civil liability for response costs incurred by the United States up to and including the date of entry of the Consent Decree. The Consent Decree specifically provides that the parties shall not be released from liability for response costs, if any, incurred by the United States after the date of entry of the Consent Decree. In addition, the agreement provides for dismissal without prejudice, as to the Government's right to institute any action for future response costs.

It should be noted that while the Hedley defendants were found liable, they are not at this time a party to this Consent Decree. It is possible, however, that the Hedleys will join in the settlement prior to its entry. A Stipulation of Dismissal without Prejudice will be executed in which the Hedleys will agree not to contest the statute of limitations issue should they be a party to a future lawsuit regarding this site.

C. Resource Requirements

Assuring no default on the payment, implementing the agreement will require only very minimal EPA resources in processing payments as they are received.

D. Issues of National Significance

None.

E. Justification

This Consent Decree will provide the recovery of approximately 95% of the Government's actual cleanup costs and 83% of the total response cost. These costs will be recovered without costly and time-consuming litigation.

As stated above, response costs, including the RI-PS, incurred after the date of entry of the Consent Decree are not included in this agreement; however, EPA believes the settling defendants will pay for the RI-PS.

There are significant risks in proceeding to trial in this case. In the first instance, only two of the defendants, Milliken and National Starch, possess ample financial ability to pay. The individual defendants have limited resources, and Unisphere, having once gone through bankruptcy, appears to be heading there again. In addition, there are significant weaknesses in the evidence linking National Starch's waste to the site. National Starch has alleged that it only sent non-hazardous waste to the site. It may be that stronger evidence could be developed later, but there exists a significant risk in proceeding against National Starch.

F. Contact Person

The contact person is Kirk R. Macfarlane of my staff. His phone number is FTS 257-2641.

G. Recommendation

I recommend that you approve the proposed settlement by signing the enclosed Consent Decree.

Enclosure

bcc: Giezelle Bennett, ICS/ERRB

THOMPSON, MANN AND HUTSON

LAW OFFICES

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January 2, 1987

Kirk R. Macfarlane, Esq.  
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U.S. Environmental Protection Agency  
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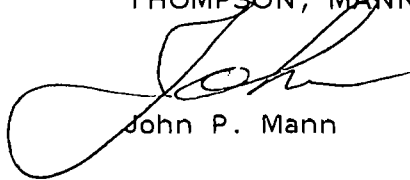
Re: USA v. Ralph C. Medley, et al  
C.A. No. 7:86-252-3

Dear Kirk:

We are enclosing the original Consent Decree in the above case. It has been signed by all counsel for the settling defendants (generators). Steve Manning requested that we mail the original to you to begin the signing process for the United States.

Very truly yours,

THOMPSON, MANN AND HUTSON



John P. Mann

JPM/hm

Enclosure

cc: G. Stephen Manning, w/Encl.

WHEREAS, the United States, on behalf of the Administrator of the Environmental Protection Agency ("EPA"), filed a complaint in this action on January 30, 1986, which action was brought pursuant to Sections 104(a) and (b) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§9604(a) and (b) and 9607(a), for recovery of costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances at the Medley Farm Site ("Site") near Gaffney, South Carolina and pursuant to

28 U.S.C. §2201 for a declaratory judgment of liability for all future response costs incurred in connection with the site;

WHEREAS, several parties have filed third-party complaints, cross-claims and counterclaims seeking contribution and/or indemnity for response costs for which said parties may be found liable;

WHEREAS, Plaintiff alleged that it has incurred and will incur response costs in connection with the cleanup of the Medley Farm Site as described in Plaintiff's Complaint;

WHEREAS, Plaintiff alleges that Settling Defendants are liable for past and future response costs associated with the cleanup of the Medley Farm Site;

WHEREAS, the Medley Farm Site has been proposed for inclusion on the fifth update to the National Priorities List (Appendix B to the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 et seq.);

WHEREAS, the parties agree that a Remedial Investigation and Feasibility Study ("RI/FS") may be needed for the Medley Farm Site in order to determine the nature and extent of contamination and to determine the appropriate remedy, if any is required, at the site;

WHEREAS, G. Ross Anderson, Jr., United States District Judge, issued an Order dated 5th November, 1986, finding the Defendants Ralph C. Medley and Clyde Medley, as owner and/or operator of the Medley Site were liable for all costs incurred and to be incurred by the Plaintiff in response to the release or threatened release of hazardous substances at the Medley Farm Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a); and

WHEREAS, the Defendants Ralph C. Medley, Clyde Medley, Grace Medley, and Barry Medley are not parties to this Consent Decree.

WHEREAS, the parties agree that this Consent Decree constitutes a settlement only of Settling Defendants' liability for the reimbursement of response

costs incurred by the United States at the Medley Farm Site up to and including the date of lodging of the Consent Decree with the Court; and

WHEREAS, the Plaintiff and Settling Defendants agree that settlement of Settling Defendants liability for past response costs and execution of this Consent Decree without further litigation and without any admission as to liability is the most appropriate means of resolving this part of Plaintiffs' claim and is in the public interest.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I.

JURISDICTION

This Court has subject matter jurisdiction over this matter and has personal jurisdiction over the parties hereto pursuant to 42 U.S.C. §§9604(a) and (b) and 9613(b) and 28 U.S.C. §1345. The parties hereto agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding arising from it.

II.

PARTIES BOUND

This Consent Decree shall apply to and be binding upon the Settling Defendants, their officers, directors, agents, servants, employees, successors in interest and assigns, and upon all persons, firms, subsidiaries, divisions, and corporations acting under or for them and upon the United States on behalf of the U.S. EPA. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Decree and to execute and to legally bind such signatory to this Consent Decree.

### III.

#### DEFINITIONS

Certain terms used in this Consent Decree are defined as follows:

- A. The "Medley Farm Site" means the waste disposal facility owned, as of the filing of the Complaint in this action, by Ralph C. Medley located at or near County Road 72 (Burnt Gin Road) near Gaffney, Cherokee County, South Carolina.
- B. "Response Costs" means all costs, including administrative and enforcement costs, incurred by the United States pursuant to CERCLA and any other applicable laws relating to removal and response actions undertaken up to the date of lodging the Consent Decree with the Court in connection with the Medley Farm Site.
- C. Any term not otherwise defined herein shall have the definition provided in 42 U.S.C. §9601.

### IV.

#### REIMBURSEMENT FOR PAST COSTS

Within thirty (30) days of the entry of this Consent Decree, the Settling Defendants shall pay a total of Five Hundred and Sixty Thousand Dollars (\$560,000) to the United States in reimbursement of response costs incurred by the United States with respect to the Medley Farm Site up to and including the date of the lodging of the Consent Decree. This amount shall be made payable by certified or cashiers check to the "EPA Hazardous Substances Response Trust Fund" and shall be remitted to U.S. EPA Superfund, P.O. Box 371003M,



Pittsburgh, Pennsylvania 15251. The transmittal of such payment shall reference that the payment is for response costs incurred at the Medley Farm Site and shall be accompanied by correspondence identifying United States v. Ralph C. Medley, et al., Civil Action No. 7-86-252-3, DOJ File Number 90-11-3-104, EPA File Numbers and the identity of the paying party.

V.

RELEASES

- A. In consideration of the payment set forth in Section IV above, the United States releases Settling Defendants from civil liability for the reimbursement of response costs incurred by the United States at the Medley Farm Site pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§9604, 9607, up to and including the date of the lodging of the Consent Decree.
- B. Nothing in this Consent Decree shall release the Settling Defendants from liability for response costs, if any, incurred by the United States after the date of the lodging of the Consent Decree in connection with any future response to the release or threatened release of hazardous substances into the environment from the Medley Farm Site including, but not limited to, conducting of a Remedial Investigation/Feasibility Study at the site and remedial action.
- C. This release shall not extend to any person or legal entity other than the Settling Defendants.
- D. Settling Defendants hereby remise and release the United States from any and all liability for actions taken and expenditures made by the United States, its agents and employees prior to the entry of this Consent Decree in responding to the release or threatened release of hazardous

substances into the environment from the Medley Farm Site. Further, Settling Defendants agree not to assert any causes of action, claims or demands against the United States for reimbursement from the Hazardous Substances Response Trust Fund, 42 U.S.C. §9631, including claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§9611, 9612, or assert any other claims or demands for sums paid in settlement of past response costs or arising from any activity performed or expenses incurred pursuant to this litigation or under this Decree.

- E. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. §300.25(d).
- F. Pursuant to Section 122(h)(4) of CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986, the Settling Defendants executing this Consent Decree have resolved their liability to the United States for past response costs to the date of entry of this Decree and shall not be liable for claims for contribution regarding matters addressed in this Decree.

## VI.

### RESERVATION OF RIGHTS

The United States reserves all claims, demands and causes of action, past or future, judicial or administrative, in law or equity, including but not limited to, cost recovery and injunctive relief and natural resource damages, against any person or entity, including the Settling Defendants, for any matters not covered under this Decree. Nothing contained herein, except as provided in Section V, shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, against Settling Defendants or against any other person or entity not a party to this Decree under Sections 104, 106 and 107 of

CERCLA, 42 U.S.C. §§9604, 9606 and 9607. Any claim or defense which the Plaintiff or Settling Defendants may have against any other person or entity not a party to this Decree, including but not limited to, claims for indemnity or contribution, is expressly reserved.

In any subsequent action brought under CERCLA by the United States for injunctive relief or recovery of response costs incurred after entry of this Decree, relating to the release or threatened release of hazardous substances into the environment from the Medley Farm Site, the Settling Defendants shall not assert that the United States is in any manner precluded or barred from instituting such an action by the principles of res judicata or rules against claim splitting.

#### VII.

##### RETENTION OF JURISDICTION

The Court shall retain jurisdiction of this matter solely for the purpose of enforcing timely payment of the amount set forth in Section IV above.

#### VIII.

##### DOCUMENT RETENTION

The United States and the Settling Defendants agree to retain and preserve for a period of five (5) years from the date of the lodging of this Consent Decree all documents produced through discovery and documents requested in discovery but not produced.

#### IX.

##### PUBLIC NOTICE AND COMMENT

This Consent Decree is subject to the public notice and comment requirements contained in Section 122(i) of CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986.

X.

TERMINATION

Upon timely payment of the amount set forth in Section IV above by Settling Defendants, the United States and Settling Defendants will jointly file a stipulation of dismissal, with prejudice, between the Plaintiff and the Settling Defendants, as to the United States claim for past response costs incurred through the date of lodging of this Decree and without prejudice as to the government's right to institute an action for future response, cost or injunctive or other relief under Section 104, 106 and 107 of CERCLA, 42 U.S.C.A. Sections 9604, 9606 and 9607 or under any other federal or state law involving matters not herein released pursuant to Section V. The Plaintiff and the Settling Defendants specifically reserve all actions, cross-actions, cross-complaints, third-party causes of action, and counterclaims they may have against Ralph C. Medley, Clyde Medley, Grace Medley and Barry Medley.


IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Consent Decree and submit it to the Court, that it may be approved and entered.

FOR THE PLAINTIFF:

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F. HENRY HABICHT II  
Assistant Attorney General  
Land and Natural Resources  
Division  
U.S. Department of Justice

FOR THE SETTLING DEFENDANTS:



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Rainey, Britton, Gibbes & Clarkson  
Attorneys for Ethox Chemicals, Inc.

APPROVED AND ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1987.

\_\_\_\_\_  
G. ROSS ANDERSON, JR.  
United States District Judge  
District of South Carolina